

§ 2638.504

(1) If the Director determines that the agency has conducted an adequate investigation and has taken appropriate corrective and/or disciplinary action, the Director shall notify the agency that the matter is closed.

(2) If the Director determines that the agency has conducted an adequate investigation and has recommended appropriate corrective and/or disciplinary action, the Director shall notify the agency that the matter will be closed upon notification that such action has been taken.

(3) If the Director determines that the agency has not conducted an adequate investigation, the Director may recommend that the agency undertake further investigative effort.

(4) If the Director determines that the agency has improperly interpreted an ethics provision or improperly applied an ethics provision to the facts of the case, the Director may, in accordance with § 2638.502, provide advice and recommendations necessary to ensure compliance.

(5) If the Director determines that the agency has taken or recommended inappropriate corrective or disciplinary action, the Director may notify the head of the agency of intent to institute proceedings under § 2638.504 or § 2638.505.

(e) *Notice of noncompliance.* If the Director determines that the head of an agency has failed to conduct an adequate investigation within a reasonable period of time, the Director shall notify the President of that determination. A Notice of Noncompliance will not be based upon a determination that the agency has improperly interpreted or applied an ethics provision or that the agency has taken or recommended inappropriate corrective or disciplinary action.

§ 2638.504 Director's finding.

(a) *In general.* If the Director has reason to believe that an employee is violating or has violated an ethics provision, the Director may initiate proceedings under this section for the purpose of making a finding as to whether there is or has been such a violation. In the context of such proceedings, the Office of Government Ethics has the burden of proof to establish that the em-

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ployee is violating or has violated an ethics provision. The procedures contained in this section do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in title II of the Ethics Act. For those findings and orders, the procedures contained in section 206 of the Act shall apply.

(b) *Investigation.* The Director may initiate such investigation as is necessary to determine whether proceedings under this section are warranted. Ordinarily, a determination to proceed will be based upon an agency report of investigation filed under § 2638.503(c) and a determination by the Director under § 2638.503(d)(5) that the agency has taken or recommended inappropriate corrective or disciplinary action.

(c) *Notice.* The employee shall be served personally or by United States mail with written notice of commencement of proceedings under this section. A copy of the notice shall be provided to the head of the agency and to the designated agency ethics official. The notice shall be signed by the Director and shall include the following:

- (1) A brief statement setting forth the basis for a possible ethics violation;
- (2) A copy of this section; and
- (3) The date by which the employee's comments must be submitted.

(d) *Employee comments.* The respondent employee has the right to comment on the alleged violation of an ethics provision by submission of evidence or arguments. As determined by the Director, the submission may be made orally or in writing. In the absence of an extension granted by the Director for good cause shown, comments shall be submitted within the time set forth in the notice.

(e) *Finding.* The Director will make a written finding as to whether a violation of any ethics provision has occurred or is occurring. The finding will include a statement of the facts upon which the finding is based and a reference to the specific ethics provision in issue. A copy of the finding will be provided to the respondent employee, the head of the agency and the designated agency ethics official.